

REMARKS/ARGUMENTS

Reconsideration of this Application and entry of this Amendment after Final are respectfully requested. The proposed amendment places the claims in better form for appeal and incorporates features of dependent claims into independent claims. Accordingly, further searching should not be required as the features should have been considered and searched previously. In view of the amendments and following remarks, favorable consideration and allowance of the application is respectfully requested.

35 U.S.C. §103 Rejections

Claims 1-3, 7-13, and 17-24 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Published Patent Application Publication No. 2033/0083616 to Lee *et al.* (hereinafter “Lee”) in view of U.S. Patent No. 5,881,534 to Alhqvist *et al.* (hereinafter “Alhqvist”) and U.S. Patent No. 6,520,323 to Colombo (hereinafter “Colombo”). Applicant respectfully traverses the rejection.

Independent claims 1 and 11 have been amended to clarify the pouch in which the balloon is placed. In particular, the third layer (previously recited in claims 25 and 26) and the porosity of the second layer (previously recited in claims 5 and 15) have been added to claims 1 and 11. Thus, claims 1 and 11 each recite pouch capable of providing a barrier to atmospheric oxygen, wherein the pouch includes a first layer including a plastics-coated foil, and a second layer having a porosity of 18-240 seconds by the Gurley porosimeter test, and a third layer including a plastics-coated foil, wherein the second layer is disposed between the first layer and the third layer. Claims 1 and 11 further recite placing an oxygen absorber in a second sealed interior space of the pouch, with the second sealed being formed by a seal line formed in the layers of said pouch. The Lee publication, and the Alhqvist, and Colombo patents, alone or in combination, do not disclose or render obvious the method of claims 1 and 11.

In particular, The Examiner relies on the Lee publication as disclosing a package “including a first layer including a plastics coated foil and a porous second layer (paragraph 0026)].” *See* Office Action, p. 2. Amended independent claims 1 and 11 recite three layers,

with the middle layer being the porous layer and the two outer layers including plastic and foil. The Lee publication discloses an outer layer of polyester material, an inner layer of linear low density polyethylene material, and a middle foil layer. Thus, the Lee publication does not disclose the pouch of claim 1.

However, the Examiner relies on a fourth reference, U.S. Patent No. 5,014,494 to George, in rejecting claims 5, 15, 25, and 26. As noted above, some of the subject matter of these claims has been incorporated into claims 1 and 11. However, the George patent also fails to disclose or render obvious the pouch recited in amended claims 1 and 11. George merely discloses that packaging materials “include plastic films, paper adhesives, and plastic/foil laminates.” *See* col. 1, lines 22-27. The George patent does not disclose or suggest the specific structure recited in claims 1 and 11 regarding the arrangement of the layers or the porosity of the middle layer. Recognizing this deficiency, the Examiner merely concludes that “it would have been obvious to one of ordinary skill in the art to arrange the layers of the multilayer packaging in any configuration, absent any showing of unexpected results.” *See* Office Action, p. 4. Contrary to the Examiner’s assertion, any configuration will not work. Because the oxygen absorber recited in claims 1 and 11 may damage the balloon if it comes into contact with it, it is desirable to keep it in a separate sealed interior space of the pouch, as also recited in claims 1 and 11. However, in order for the oxygen absorber to perform its function, the seal line must allow air to pass between the two interior spaces. For this reason, the porous middle layer of the pouch is utilized. As noted, the references relied upon by the Examiner do not disclose or suggest such an arrangement.

Accordingly, because the references, even if combined, which Applicant does not concede is proper, do not disclose or suggest the pouch recited in independent claims 1 and 11, claims 1 and 11 are patentable over the references. Claims 2-3, 7-10, 12-13, and 17-24 depend from and add features to independent claims 1 and 11, and are therefore allowable over the cited references for at least the same reasons as claims 1 and 11. Therefore, Applicant respectfully requests that the rejection be withdrawn,

Claims 5, 15, 25, and 26 stand rejection under 35 U.S.C. §103(a) as being unpatentable over Lee and Almqvist, as applied to claims 1, 11 and 24, and further in view of U.S. Patent No. 5,014,494 to George. Applicant assumes that the rejection also includes the Colombo patent, as applied to claims 1 and 11. Claims 25 and 26 have been cancelled thereby rendering their rejection moot. Applicant respectfully traverses the rejection of claims 5 and 15. As explained above, the George patent does not disclose or suggest the pouch structure recited in independent claims 1 and 11. Claims 5 and 15 depend from and add features to independent claims 1 and 11, respectively, and are therefore allowable over the cited references, including the George patent, for at least the same reasons discussed above with respect to claims 1 and 11. Applicant therefore respectfully requests that the rejection be withdrawn.

Conclusion

For the foregoing reasons, Applicant believes all the pending claims are in condition for allowance and should be passed to issue. The Commissioner is hereby authorized to charge any additional fees which may be required under 37 C.F.R. 1.17, or credit any overpayment, to Deposit Account No. 01-2525. If the Examiner feels that a telephone conference would in any way expedite the prosecution of the application, please do not hesitate to call the undersigned at telephone (707) 543-0221.

Respectfully submitted,

/Catherine C. Maresh, Reg. No. 35,268/
Catherine C. Maresh
Registration No. 35,268
Attorney for Applicant

Medtronic Vascular, Inc.
3576 Unocal Place
Santa Rosa, CA 95403
Facsimile No.: (707) 543-5420